

November 18 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

ORIGINAL

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF SOLOMON S. NEUHARDT,)	Supreme Court Cause No.
An Attorney at Law,)	ODC File Nos. 08-189, 09-005 & 09-059
Respondent.)	COMPLAINT

By request of a Review Panel of the Commission on Practice, the Office of Disciplinary Counsel for the State of Montana ("ODC") hereby charges Solomon S. Neuhardt with professional misconduct as follows:

General Allegations

1. Solomon S. Neuhardt, hereinafter referred to as Respondent, was admitted to the practice of law in the State of Montana in 2001, at which time he took the oath required for admission, wherein he agreed to abide by the Rules of Professional Conduct, the Disciplinary Rules adopted by the Supreme Court, and the highest standards of honesty, justice and morality, including but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated.

1 2. The Montana Supreme Court has approved and adopted the Montana Rules of
2 Professional Conduct ("MRPC"), governing the ethical conduct of attorneys licensed to practice
3 in the State of Montana, which Rules were in effect at all times mentioned in this Complaint.

4 **Count One (ODC File 08-189)**

5 3. ODC realleges and incorporates paragraphs 1 through 2 of the General
6 Allegations as if fully restated in this Count One.

7 4. On April 18, 2007, Harold Davis III ("Davis") was cited for possession of drug
8 paraphernalia and discharging a firearm within city limits. Davis hired Respondent on May 3,
9 2007 to represent him on the charges.

10 5. A case file was opened in Billings Municipal Court on May 18, 2007, captioned
11 *City v. Davis*, Billings Municipal Court, Case No. TK-2007-5636. Respondent filed a Notice of
12 Appearance on May 23, 2007.

13 6. An Omnibus Hearing was held on June 26, 2007, during which a jury trial was set
14 for July 26, 2007.

15 7. On July 25, 2007, at 4:41 p.m., Respondent filed a Motion to Continue Jury Trial.
16 The motion states: "Counsel failed to calendar the trial and apologizes to the Court. Defendant
17 has been unreachable, and if this continues we will advise the Court immediately." A Waiver of
18 Speedy Trial signed by Davis was attached to the motion. The Court denied the motion.
19

20 8. Neither Respondent nor Davis appeared at the jury trial. A Bench Warrant was
21 issued on August 2, 2007 for Davis' arrest for his failure to appear. The warrant was later
22 quashed.

23 9. In violation of Rule 1.1, MRPC, Respondent failed to provide Davis with
24 competent representation.
25

1 10. In violation of Rule 1.3, MRPC, Respondent failed to act with reasonable
2 diligence and promptness in representing Davis.

3 11. In violation of Rule 1.4, MRPC, Respondent failed to keep Davis reasonably
4 informed about the status of the matter.

5 **Count Two (ODC File No. 09-005)**

6 12. ODC realleges and incorporates paragraphs 1 through 2 of the General
7 Allegations as if fully restated in this Count Two.

8 13. In April 2007, James Desjarlais ("Desjarlais") hired to Respondent to assist him
9 regarding a wrongful death suit claim concerning Desjarlais' mother, Betty Desjarlais.

10 14. The claim arose in North Dakota. Respondent arranged for the Vogel Law
11 Office, Grand Forks, North Dakota, to handle the matter.

12 15. The Vogel Law Firm filed the wrongful death lawsuit in Williams County, North
13 Dakota, Northwest Judicial District, on May 30, 2007. The is captioned *James Desjarlais,*
14 *individually, and as Personal Representative of the Estate of Betty Desjarlais, deceased, v. Mark*
15 *A. Olson, M.D., Trinity Health System, Trinity Medical Group and Trinity Community Clinic-*
16 *Western North Dakota, Civil No. 07-C-0780.*

17 16. Desjarlais paid Respondent \$3,700.00 to place in his trust account and to be used
18 to pay the Vogel Law Office's bills for out-of-pocket expenses as the case progressed.

19 17. On February 27, 2008, Dennis and Nancy Berkland filed a lawsuit against
20 Desjarlais--*Berkland v. Desjarlais*, Montana Thirteenth Judicial District Court, Yellowstone
21 County, Cause No. DV-08-0283. The case involved the Berklands claim against Desjarlais for
22 monies he allegedly owed them.
23

24 18. Respondent entered an appearance in the Berkland case on Desjarlais' behalf.
25

1 19. In August 2008, Desjarlais terminated Respondent's representation in both the
2 wrongful death case and the Berkland case. Desjarlais retained attorney Paula Saye-Dooper
3 ("Saye-Dooper") to represent him in both matters.

4 20. During Respondent's representation of Desjarlais regarding the wrongful death
5 cases, Desjarlais requested that Respondent provide him with an accounting of the \$3,700.00 that
6 Desjarlais gave Respondent. Respondent did not provide an accounting.

7 21. In violation of Rule 1.4, MRPC, Respondent failed to keep Desjarlais reasonably
8 informed about the status of his legal matter, and/or failed to promptly comply with Desjarlais'
9 reasonable requests for information.

10 22. Upon termination of Respondent's representation, Desjarlais and Saye-Dooper
11 requested that Respondent give Saye-Dooper his files, original documents that Desjarlais
12 provided to Respondent, and the balance of any funds along with an accounting of funds.

13 23. On or about January 9, 2009, Respondent sent Saye-Dooper a check drawn on his
14 trust account for \$2,200.

15 24. Respondent did not provide Saye-Dooper with all the request files and documents
16 until early 2009.

17 25. Respondent's failure to timely deliver said funds, files and documents constitutes
18 a violation of Rule 1.16(d), MRPC.

19
20 **Count Three (ODC File No. 09-059)**

21 26. ODC realleges and incorporates paragraphs 1 through 2 of the General
22 Allegations as if fully restated in this Count Three.

1 27. By Information filed on March 13, 2008, Kevin Kinn ("Kinn") was charged with
2 felony driving under influence of alcohol or drugs. The case was captioned *State v. Kinn*,
3 Montana Thirteenth Judicial District Court, Yellowstone County, Cause No. DC 08-0167.

4 28. Kinn retained Respondent to defend him.

5 29. On May 2, 2008, Respondent filed a Motion to Suppress or Dismiss. On June 9,
6 2008, Respondent filed a Motion for Extension to June 15, 2008 to file a brief in support of the
7 motion. The Court never ruled on the Motion for Extension.

8 30. On June 25, 2008, the State filed its Motion to Dismiss Defendant's Motion to
9 Suppress or Dismiss. The ground for the State's motion was that the Defendant failed to file a
10 brief in support of his Motion to Suppress or Dismiss.

11 31. On July 8, 2008, Respondent filed a Brief in Support of Motion to Suppress or
12 Dismiss.

13 32. By Order dated July 21, 2008, the Court denied the Motion to Suppress or
14 Dismiss.

15 33. On August 6, 2008, Respondent filed a Motion for Reconsideration of the Motion
16 to Suppress or Dismiss. By Order dated August 21, 2008, the Court denied the motion. The
17 Order states, in part: "The Defendant's extreme tardiness in filing a supporting brief, and total
18 disregard of the Uniform District Court rules, supports a dismissal of the Motion to Suppress or
19 Dismiss and warrants a denial of the Defendant's Motion for Reconsideration."
20

21 34. On September 3, 2008, Respondent filed a Petition for Writ of Supervisory
22 Control with the Montana Supreme Court. On September 10, 2008, the Montana Supreme Court
23 denied the petition.
24
25

35. In violation of Rule 1.1, MRPC, Respondent failed to provide Kinn with competent representation.

36. In violation of Rule 1.3, MRPC, Respondent failed to act with reasonable diligence and promptness in representing Kinn.

WHEREFORE, the Office of Disciplinary Counsel prays:


1. That a Citation be issued to the Respondent, to which shall be attached a copy of the complaint, requiring Respondent, within twenty (20) days after service thereof, to file a written answer to the complaint;

2. That a formal hearing be had on the allegations of this complaint before an Adjudicatory Panel of the Commission;

3. That the Adjudicatory Panel of the Commission make a report of its findings and recommendations after a formal hearing to the Montana Supreme Court, and, in the event the Adjudicatory Panel finds the facts warrant disciplinary action and recommends discipline, that the Commission also recommend the nature and extent of appropriate disciplinary action, and,

4. For such other and further relief as deemed necessary and proper.

DATED this 17th day of November, 2009.


Shaun R. Thompson
Disciplinary Counsel